WASHINGTON STATE DEPARTMENT OF ECOLOGY

Focus

Changes to the Air Operating Permit Program

Requirements for Insignificant Emissions Units

The Department of Ecology (Ecology) is proposing to change Chapter 173-401 WAC, pertaining to operating permits. The purpose of this focus sheet is to explain the proposal and the reasons for it.

Background

In 1990, Congress made changes to the federal Clean Air Act. One change was to create operating permits for industrial sources of air pollution (codified in Title 5 of the act). Prior to the creation of these permits, facility managers, regulators and the public had to look through many requirements to find those that applied to a certain facility. An operating permit brings all applicable requirements into one place and requires managers of the pollution source to certify that it complies with all of the applicable requirements.

In 1991, the Washington State Legislature updated the Washington Clean Air Act to make it consistent with the new federal program.

The problem

In the fall of 1993, Ecology developed Washington's original operating permits regulation to comply with federal regulations (40 CFR part 70, or Title 5, of the federal Clean Air Act). At the same time, Ecology applied to the federal Environmental Protection Agency (EPA) for program approval. In November 1994, EPA granted Ecology and Washington's seven local air quality agencies interim approval for the operating permits program. However, EPA also directed the state to correct several issues in order to be granted full approval for the program.

Ecology and the local air agencies made the changes requested by EPA, with the exception of the change related to "insignificant emission units." Insignificant emission units (IEUs) are small, minor pollution sources at industrial facilities that are subject to the operating permit regulation. They include such things as bathroom vents, lubricating-oil storage tanks, recreational fireplaces, barbecues, plastic pipe welding, and wet sand-and-gravel screening. Ecology and local agencies disagreed with EPA about requiring IEUs to meet monitoring, record-keeping, and reporting (MRR) requirements of Title 5. Washington's rule exempted IEUs from these requirements in order to focus on the larger sources of pollution, where the most important air quality gains can be made. Ecology and local agencies believed that subjecting the small, truly insignificant units and activities to the same level of rigorous MRR would place more attention than necessary on small emissions.

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How did we get where we are today?

As a result of the disagreement with EPA about IEUs, business interests and Ecology sued EPA in the Ninth District Court of Appeals in the spring of 1995. The lawsuit had two main points. The first was that, since EPA's rules were silent on the issue of MRR for IEUs, Washington's approach should be acceptable to EPA. The second was that EPA was treating permitting authorities inconsistently by approving similar provisions in other states, while not approving the same kinds of provisions in Washington's program. In June 1996, the court ordered EPA to approve Washington's program with respect to IEUs. The issue then did not progress for a number of years.

On another front, EPA began revising the federal operating permit regulations. After a revision of this type takes place, states are required to revise their regulations to reflect the federal changes. As a consequence, many states in the nation were faced with the prospect of revising their programs twice in a short period of time -- once in response to issues raised in their interim approval process and then again when EPA finished the changes to its operating permit regulations. To address this problem, EPA extended existing interim approvals of state programs for up to five years. However, because federal law expressly prohibits extending interim approvals, EPA was sued over this issue in the fall of 2000. The resulting settlement agreement provided that EPA would take comment on all 50 states' operating permit programs, as well as those of the many local agencies across the nation.

Just one commenter addressed Washington's operating permit program. One of the comments was that Washington's rules on IEUs did not meet requirements of the federal regulations. EPA agreed with this comment and issued a notice of deficiency (NOD) on December 14, 2001. A notice of deficiency is the start of a process that could result in EPA taking over Washington's permit program and embargoing federal highway funds. An NOD is issued when EPA believes that a state is incorrectly administering the program or if the program is not set up properly in state rules.

Ecology and business interests initiated a compromise with EPA over the issue of IEUs, which led to an agreement on new language for Ecology's regulation. Ecology is proposing this new language in a revision to the operating permit regulation.

Proposed rule revisions

The proposed revisions to Washington's operating permits program include:

- Permitting agencies may require MRR for IEUs if the permitting authority determines it is necessary to assure compliance with regulations.

- Definitions of "continuous compliance" and "intermittent compliance" will be added to the rule. These terms will make it clear what the compliance status is when sources submit their semi-annual (or more frequent) compliance reports.

- The proposed language clarifies what is considered a complete operating permit application. The current rule says that a copy of the standard form needs to be submitted, but many industries have found that the data from their facilities do not easily fit into the form. The proposed language states that complete information on all of the required data elements is sufficient for the permit application.

- Reporting requirements for deviations from permitted standards are clarified. Currently, the rule says, "Other deviations shall be reported no later than 30 days after the end of the month during which the deviation is discovered or as part of routine emission monitoring reports." Ecology proposes adding the words "whichever is first."

- Since EPA has changed the definition of "major source," the proposed language will include a list of sources subject to the operating permit program. In addition, wording will be changed to bring Washington's definition in line with the new federal definition.

- The proposed language will make all parts of the rule consistent regarding timeframes for renewal applications.

Next steps

Ecology will hold a public hearing to receive comments on the proposed changes to the operating permit program. After considering all of the comments received, Ecology will make a decision on what the new rule language will be. The public hearing will be held June 14, 2002 at 2:00 p.m. in the auditorium of the Ecology Building, 300 Desmond Drive in Lacey, Washington.

Ecology expects that the final rule language will be satisfactory to EPA and that the NOD will be lifted. At that point, Washington will have a fully approved operating permit program.

For more information

Tom Todd
Air Quality Program
Department of Ecology
P. O. Box 47600, Olympia, WA 98516-7600
(360) 407-7528; fax: (360) 407-7534
e-mail: ttod461@ecy.wa.gov

If you require this document in alternative format, please call Judy Beitel at (360) 407-6878 (voice) or (360) 407-6006 (TDD only).